

GOLDEN STATE RISK MANAGEMENT AUTHORITY

**INSTRUCTIONS FOR
ELECTING WORKERS' COMPENSATION COVERAGE
FOR UNPAID VOLUNTEERS**

The foregoing page explains that workers' compensation insurance coverage is not provided to unpaid volunteers. Many GSRMA member agencies have directors or trustees who serve on their boards without pay, yet those board members are not covered should they incur an injury while providing services to the agency. In addition, many member agencies have other unpaid volunteers providing services to the agency without compensation.

Your agency has the option of electing to provide workers' compensation insurance coverage to all unpaid volunteers, or only to your *unpaid* directors or trustees, or both. (Directors/trustees *who receive compensation* are currently covered "employees.") If your board decides to provide such coverage, you must adopt a Resolution doing so. Attached you will find two sample Resolutions—one for electing coverage for only unpaid directors/trustees, the other electing coverage for all authorized volunteers including directors/trustees.

Please prepare the appropriate Resolution by completing all of the blanks highlighted below. The signed and dated Resolution must be submitted to GSRMA as soon as it is adopted.

GSRMA wants every member agency to make a fully-informed and knowing decision, including deciding to NOT provide such coverage. Therefore, if your board elects to NOT provide workers' compensation to any board members or other volunteers, we ask that you complete the information below and return it to GSRMA at your earliest convenience.

Please let us know if you have any questions or need additional information.

The governing board of _____ has duly considered and has elected to NOT provide workers' compensation coverage to its unpaid board members and other volunteers providing services to the agency.

By: _____
[Signature]

Printed Name: _____

Title: _____

Date: _____

GOLDEN STATE RISK MANAGEMENT AUTHORITY

VOLUNTEER WORKERS' COMPENSATION COVERAGE

The California Labor Code requires that all “employees” be covered under a workers’ compensation insurance policy. Not only does the Labor Code define “employee,” it also provides guidance about who is **not** an employee and, therefore, **not covered** by workers’ compensation insurance.

Specifically, Labor Code § 3352 states that the term “employee” **excludes** any person who performs service for a public agency who receives no compensation for such service, i.e., a “volunteer.”¹

Accordingly, most volunteers are not considered employees and, therefore, are excluded from coverage under workers’ comp insurance.² **Importantly, nonpaid board members are also not considered to be “employees” and, therefore, are not covered by worker’s comp insurance.**

However, the Labor Code does allow workers’ compensation insurance coverage for volunteers, including unpaid board members, but **only if your board adopts a resolution** specifically electing such coverage.

There are a number of issues your board should consider when deciding whether to provide workers’ comp coverage for your agency’s volunteers. For example:

- First, does your agency use volunteers? Are your board members paid for their service or not?
- Importantly, your contribution to GSRMA does not generally increase if you choose to provide workers’ compensation coverage to volunteers.
- However, a significant workers’ compensation claim by an injured volunteer could adversely affect your loss ratio, thereby increasing your contribution to GSRMA for coverage.
- On the other hand, an injured volunteer who is **not covered** by workers’ compensation can sue your agency for damages, which will likely also require increased contributions to GSRMA for liability coverage.
- Workers’ compensation is a “no-fault” system deemed by law to be the injured worker’s “exclusive remedy.” That means, first, that fault or cause is not an issue if a worker is injured during the course and scope of his or her employment, coverage is mandatory. Second, the “exclusive remedy” concept means that the injured worker must rely solely on worker’s compensation for medical care and compensation—he or she is generally prohibited from suing the agency.
- Without workers’ compensation coverage, a volunteer may find it difficult or expensive to obtain treatment or compensation for any injury suffered with providing services to the agency.
- Does your agency want to provide coverage to volunteers, including your unpaid board members?

These considerations may be different for each agency. If you have any questions or need clarification, please do not hesitate to contact GSRMA. Remember, if you want coverage for any or all volunteers, Labor Code § 3363.5 requires your agency to adopt the necessary resolution and provide it to GSRMA. A sample resolution is attached.

¹ Volunteers may receive reimbursement for meals, transportation, lodging or other incidental expenses, which are not considered “compensation for service” under the workers’ compensation scheme.

² An exception is volunteer firefighters, who are covered “employees” under workers’ compensation.

RESOLUTION NO. _____ 20 ____

ELECTING WORKERS' COMPENSATION COVERAGE FOR UNPAID VOLUNTEERS

ADOPTED BY THE BOARD OF _____ OF THE

NAME OF DISTRICT: _____

on Date of

_____, 20____

WHEREAS, the California Labor Code provides, with certain exceptions, that volunteers providing services to government agencies are not covered under California Workers' Compensation insurance; and

WHEREAS, Labor Code section 3363.5 authorizes public agencies, through action by resolution, to provide such volunteers with workers' compensation coverage while they are acting for or on behalf of the agency; and

WHEREAS, the Board of [Trustees/Directors] finds that the services provided by such volunteers benefit the [Name of Agency] and its citizens; and

WHEREAS, the Board of [Trustees/Directors] has considered the desirability of providing workers' compensation coverage to those volunteers designated below,

NOW THEREFORE, BE IT RESOLVED by the Board of [Trustees/Directors] of the [Name of Agency]:

1. That, pursuant to California Labor Code § 3363.5, only those volunteers who have received prior written approval from the [Name of Agency] to provide services to the Agency/District are deemed employees of the Agency/District for purposes of workers' compensation coverage and only while performing services for or on behalf of the Agency/District, effective as of the date of this Resolution, and

2. That, pursuant to California Labor Code § 3363.5, the unpaid members of the Board of [Trustees/Directors] of the [Name of Agency] are deemed employees of the Agency/District for purposes of workers' compensation coverage while performing services for or on behalf of the Agency/District, effective as of the date of this Resolution.

On a motion by [Trustee/Director] _____, seconded by [Trustees/Directors] _____, the foregoing resolution was passed and adopted this ___ day of _____, 20____, by the following vote, to wit:

Ayes: _____, _____, _____

Noes: _____

Absent: -0-

Attested by:

Name of Agency: _____

Clerk of the Board

By: _____
Chair, Board of _____

RESOLUTION NO. _____ 20 ____

ELECTING WORKERS' COMPENSATION COVERAGE FOR UNPAID VOLUNTEERS

ADOPTED BY THE BOARD OF DIRECTORS OF THE

[NAME OF AGENCY]

on Date of

_____, 20 ____

WHEREAS, the California Labor Code provides, with certain exceptions, that volunteers providing services to government agencies are not covered under California Workers' Compensation insurance; and

WHEREAS, Labor Code section 3363.5 authorizes public agencies, through action by resolution, to provide such volunteers with workers' compensation coverage while they are acting for or on behalf of the agency; and

WHEREAS, the Board of Directors finds that the services provided by such volunteers benefit the [Name of Agency] and its citizens; and

WHEREAS, the Board of Directors has considered the desirability of providing workers' compensation coverage to those volunteers designated below,

NOW THEREFORE, BE IT RESOLVED by the Board of Directors of the [Name of Agency]:

1. That it is the policy of the District that most organizations and persons providing volunteer services to the Perfect Little District shall provide proof of liability and workers' compensation insurance before providing such services, and

2. That, in the event such liability and workers' compensation insurance coverage is either unavailable or not provided, pursuant to California Labor Code § 3363.5, only those volunteers who have received **prior written approval** from the [Name of Agency] to provide services to the District are deemed employees of the District for purposes of workers' compensation coverage and only while performing services for or on behalf of the District, effective as of the date of this Resolution.

On a motion by Director _____, seconded by Director _____, the foregoing resolution was passed and adopted this ____th day of _____, 20 ____, by the following vote, to wit:

Ayes: _____, _____, _____

Noes: _____

Absent: -0-

Attested by: _____ [Name of Agency]

Clerk of the Board

By: _____
Chair, Board of Directors